

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 23-80101-CR-CANNON-REINHART

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD J. TRUMP, et al.,

Defendants.

**MOTION FOR LEAVE TO FILE BRIEF BY FORMER ATTORNEY GENERAL
EDWIN MEESE III, LAW PROFESSORS STEVEN CALABRESI AND GARY
LAWSON, CITIZENS UNITED, AND CITIZENS UNITED FOUNDATION
AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT PRESIDENT TRUMP'S
MOTION TO DISMISS [ECF NO. 326]**

Former United States Attorney General Edwin Meese III, Professors of Law Steven Calabresi and Gary Lawson, Citizens United, and Citizens United Foundation respectfully submit this motion for leave to file a brief as *amici curiae* in support of President Trump's Motion to Dismiss the Indictment Based on the Unlawful Appointment and Funding of Special Counsel Jack Smith [ECF No. 326].

1. Attorney General Meese has been a leading figure in American law for more than 40 years. He served eight years in the Cabinet of President Ronald Reagan, first in the White House as Counselor to the President, then as the seventy-fifth Attorney General of the United States. He is now the Ronald Reagan Distinguished Fellow Emeritus at the Heritage Foundation. Attorney General Meese led the Department of Justice during the time that Independent Counsels were authorized by statute, and has a distinctive perspective as to what the Constitution requires for the proper administration of justice with regards to such officials, and how they differ from Special

Counsels such as Jack Smith. This Court would benefit from Attorney General Meese's knowledge on Justice Department operations and legal authorities.

2. Professor Calabresi and Professor Lawson are leading scholars on the original public meaning of the Constitution. These professors have studied the Appointments Clause issue relevant to the prosecution of a former President of the United States, and their scholarship on this issue was published by one of the Nation's premier legal journals, *Notre Dame Law Review*. Justices of the Supreme Court have cited to their scholarship as helpful in informing the Court's deliberations. *See, e.g., United States v. Vaello Madero*, 596 U.S. 159, 169 (2022) (Thomas, J., concurring) (citing Professor Calabresi); *id.* at 181, 185 n.1 (Gorsuch, J., concurring) (citing Professor Lawson). This Court would benefit from a presentation of their scholarship in this case.

3. Citizens United (a 501(c)(4) social welfare organization) and Citizens United Foundation (a 501(c)(3)) educational and legal organization) are dedicated to restoring government to the people by promoting federalism, free enterprise, individual liberty, and limited government. Their advocacy for the rule of law under the Constitution has resulted in legal precedents to advance these principles, most prominently in *Citizens United v. FEC*, 558 U.S. 310 (2010).

4. Lead counsel for *Amici Curiae*, Gene C. Schaerr, is well-qualified to present this material to assist the Court. Mr. Schaerr served as law clerk to Chief Justice Warren Burger and Justice Antonin Scalia on the Supreme Court, later served as Associate Counsel to the President in the White House of President George H.W. Bush, and has argued seven cases before the Supreme Court, in addition to numerous cases in the courts of appeals and district courts.

5. The Appointments Clause issue presented by President Donald J. Trump in the relevant Motion to Dismiss, [ECF No. 326], is of great import to the constitutional order in this Nation, and deserves thorough briefing and careful scholarship. It is what the Supreme Court has

labeled a structural constitutional issue, *Freytag v. Comm'r*, 501 U.S. 868, 878–79 (1991), one that is quasi-jurisdictional in its significance.

6. For these reasons, *Amici Curiae* offer the attached 18-page brief to assist the Court in its deliberations on this issue. The brief is within the 20-page limit under local rules for filings that are not governed by a more specific page limit. S.D. Fla. L.R. 7.1(c)(2). Counsel attempted filing this motion and the attached brief seven days after President Trump filed the Motion to Dismiss that the brief supports, [ECF No. 326], but this Court’s specific procedures for filing *amicus* briefs in this criminal matter required waiting until today to complete the filing. This Court’s rules are silent on filing deadlines for *amicus* briefs. Both Supreme Court and Eleventh Circuit rules establish a timeframe of filing an *amicus* brief 7 days after the filing of the party brief that the *amicus* supports. *See* Sup. Ct. R. 37(3); Fed. R. App. P. 29(a)(6). This Court should accordingly regard this as a timely submission. No party objects to the filing of this brief.

For these reasons, *Amici Curiae* Attorney General Meese, Law Professors Steven Calabresi and Gary Lawson, Citizens United, and Citizens United Foundation respectfully ask leave of this Court for the attached brief to be entered onto the docket of this case.

CERTIFICATION OF GOOD-FAITH CONFERENCE

Pursuant to S.D. Fla. L.R. 88.9(a), undersigned counsel certifies that on February 27 and 28, 2024, they conferred via email with counsel for the Government and counsel for Defendants regarding the relief requested in this motion. Counsel for President Donald J. Trump consents to the filing of the brief, as do Counsel for Co-Defendant Waltine Nauta and Counsel for Co-Defendant Carlos de Oliveira. The United States takes no position on this Motion.

March 5, 2024

Respectfully submitted,

/s/ Edward H. Trent

GENE C. SCHAERR*

EDWARD H. TRENT (FSB #957186)

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JUSTIN A. MILLER* **

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**Pro hac vice forthcoming*

**Not yet admitted in D.C.

Practicing under the supervision
of D.C. bar members.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2024, I caused a true and correct copy of the foregoing to be served via ECF on all parties and counsel of record in this matter.

/s/ Edward H. Trent
Edward H. Trent